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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,239	06/20/2001	Jeffrey D. Washington	5150-48900	5831
35690	7590	01/25/2005		
MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. P.O. BOX 398 AUSTIN, TX 78767-0398			EXAMINER VU, KIEU D	
			ART UNIT 2173	PAPER NUMBER

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/886,239

Applicant(s)

WASHINGTON ET AL.

Examiner

Kieu D Vu

Art Unit

2173

-- **Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kodosky et al ("Kodosky", USP 5610828).

Regarding claims 1 and 9, Kodosky teaches steps for creating a graphical program that performs a numerical function (abstract), comprising displaying a node in a graphical program in response to user input (col. 15, lines 1-4); configuring the node to receive data values, in response to user input; configuring the node to perform a numerical function (Minimum or Maximum) on at least a subset of the received data values, in response to user input (col. 18, lines 27-49); executing the graphical program; the node receiving a plurality of data values during execution of the graphical program; the node determining a data collection on which to perform the numerical function, wherein the data collection comprises at least a subset of the data values received and the node performing the numerical function on the data collection (col 11, lines 34-42); wherein the node maintains state information regarding received data values and uses the state information to determine the data collection on which to perform the numerical function (col 38, lines 63-67).

Regarding claims 2 and 10, Kodosky teaches receiving user input requesting to specify configuration information for the node, displaying a graphical user interface (GUI) for specifying configuration information for the node, in response to the user input requesting to specify configuration information for the collector (col 10, lines 22-27); wherein said configuring the node to perform the numerical function on at least a subset of the received data values is performed in response to user input received via the GUI (col 11, lines 34-42).

Regarding claims 3 and 11, Kodosky teaches specifying a collection mode for the node (col 10, lines 22-27) wherein the collection mode determines the at least a subset of the received data values on which to perform the numerical function (col 11, lines 34-42).

Regarding claims 4 and 12, Kodosky teaches the mode Always for the node (all input variables are used; col 3, lines 50-57).

Regarding claims 5 and 13, Kodosky teaches the node is a primitive node provided by a graphical programming development environment for inclusion in the graphical program (abstract).

Regarding claims 6 and 14, Kodosky teaches the numerical function performed on the data collection is a minimum value function or a maximum value function (col 18, lines 26-31).

Regarding claims 7 and 15, Kodosky teaches configuring the node to receive data values comprises connecting an input terminal of the node to an output terminal of another node in the graphical program (col 47, lines 49-52).

Regarding claims 8 and 16, Kodosky teaches one or more output terminals corresponding to one or more numerical functions (inherent); wherein said configuring the node to perform the numerical function on at least a subset of the received data values comprises connecting a first output terminal of the node to a data target in the graphical program, wherein the first output terminal corresponds to the numerical function (col 48, lines 17-34).

3. Applicant's arguments filed 07/12/04 have been fully considered but they are not persuasive.

In response to Applicant's argument that "[i]n asserting that Kodosky teaches 'configuring the node to perform a numerical function.....to return a maximum or minimum of a pair or set of values', it is noted that such is not quite the case. The Applicant argues that the control is a graphical user interface in a front panel as opposed to a node in a block diagram, however, the claim cites 'node' and does not limit that that node is in a block diagram, therefore, 'node' in the claim can be reasonably interpreted as an element or a control. The Applicant further argues that 'Minimum or Maximum' does not refer to max or min function that operate to return a maximum or minimum of a pair of set value, it is noted that the claim cites 'configuring the node to perform a numerical function', the claim is silent regarding whether or not that the function is performed to return a value or a result. Therefore, even though 'Maximum or Minimum' in the passage refers to the specification of value bounds on data to be received or displayed by the control" as Applicant remarks, the fact that the

control is configured to have numerical maximum or minimum value bounds can be reasonably interpreted as the control is configured to perform a numerical function.

In response to Applicant's argument that "[i]n asserting that Kodosky teaches "executing the graphical program.....the passage describes a conditional structure ...but that does not itself perform a numerical function" it is noted that lines 39-42 of column 11 teaches using inputs to generate output after execution of the graphical program.

In response to Applicant's argument that "[i]n asserting that Kodosky teaches wherein the nodes maintains state information...", it is noted that Virtual instrument includes controls and nodes (col 14, lines 1-2 and lines 8-16). Therefore, it is inherent that state information of VI (col 38, lines 63-67) is state information of the element or node or control.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kieu D. Vu.

The examiner can normally be reached on Mon - Thu from 7:00AM to 3:00PM at 571-272-4057.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca, can be reached at 571-272-4048.

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

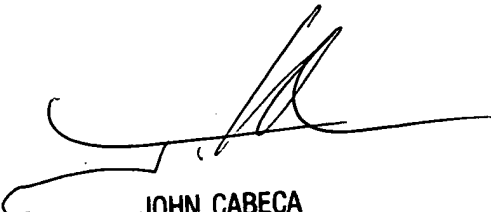
703-872-9306

and / or:

571-273-4057 (use this FAX #, only after approval by Examiner, for "INFORMAL" or "DRAFT" communication. Examiners may request that a formal paper / amendment be faxed directly to them on occasions).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703-305-3900).

Kieu D. Vu



JOHN CABECA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 210F